

SENATE BILL 3157
By Cooper

AN ACT to amend Tennessee Code Annotated, Section 49-1-103;
Section 49-2-203; Section 49-8-203 and Section 49-9-209,
relative to schools.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-1-103, is amended by adding the
following new subdivisions:

(3) "Design-build firm" means a partnership, corporation, or other legal entity
which:

(A) Is certified to engage in contracting through a certified or registered
general contractor or a certified or registered building contractor as the qualifying
agent; or

(B) Is certified to practice or to offer to practice either engineering;
certified to practice or to offer to practice architecture;

(4) "Design-build contract" means a single contract with a design-build firm for
the design and construction of a public construction project.

(5) "Design criteria package" means concise, performance-oriented conceptual
drawings and outline specifications of the public construction project. The purpose of
the design criteria package is to furnish sufficient information to permit design-build firms
to prepare a bid or a response to an agency's request for proposal. The design criteria
package must specify performance-based criteria for the public construction project,
including the legal description of the site, survey information concerning the site, interior
space requirements and relationships, material quality standards, schematic layouts and
conceptual design criteria of the project, site development requirements, provisions for

utilities, storm water retention and disposal, and parking requirements applicable to the project.

(6) "Design criteria professional" means a person who holds a current certificate of registration to practice architecture or landscape architecture or a person who holds a current certificate as a registered engineer to practice engineering and who is employed by or under contract to the agency for the provision of professional architectural services, landscape architectural services or engineering services in connection with the preparation of the design criteria package.

(7) "Construction management at risk" means the board and the construction manager have mutually agreed upon and entered into an agreement for a guaranteed maximum price of the project.

SECTION 2. Tennessee Code Annotated, Section 49-2-203(a)(3)(C), is amended by adding the following new subdivision:

(v) A county, city, or special school district board of education (board) shall have the power to employ procedures to contract with a design-build firm for the construction of new facilities, or additions to existing facilities pursuant to a design build contract, which shall be procured through a request for proposal as provided in this subdivision. All design-build firms shall procure bids for each of their proposals independently, which bid process shall satisfy any other competitive bid requirements. Procedures for the use of a competitive bid process must include as a minimum the following:

(a) The preparation of a design criteria package for the design and construction of the public construction project. The board may retain the services of a criteria design professional to prepare this package or, if they deem qualified, use its employees.

(b) The qualification and selection of no fewer than three (3) design-build firms as the most qualified based on the qualifications, availability, and past work of the firms, including the principals or members thereof.

(c) The evaluation and selection of the design-build firm based on factors which may include qualifications and experience on similar projects, design

features, experience of personnel to be assigned to the project, cost, and any additional factors deemed relevant by the board; cost is not to be the sole criterion for evaluation.

(d) The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.

(e) The evaluation of the design-build firms, the approval by the board of the detailed working drawings of the project; and for evaluation of the compliance of the project with the design criteria package by the design criteria professional or the board's employees.

SECTION 3. Tennessee Code Annotated, Section 49-8-203(a)(1), is amended by adding the following new subdivisions:

(F)

(i)

(a) Contract for the construction of school buildings or additions to existing buildings. Where the expenditure is for the construction of school buildings or additions to existing buildings in excess of ten thousand dollars (\$10,000), such contract shall be made after competitive bids. Public notice shall be given at least ten (10) days in advance of accepting bids for such construction, and the board shall award the contract to the lowest and best bidder. In the event that no bid is within the budgetary limits set by the board for such construction, the board may negotiate with the lowest and best bidder to bring the cost of the construction within the funds available.

(b) Construction management services which are provided for a fee and which involve coordination and oversight of the planning, design, bid, and construction phases of the project, are deemed to be professional services and may be performed by a qualified person on the

basis of recognized competence and integrity. Construction management services are to be procured through a request-for-proposals process. The request-for-proposals process will invite prospective proposers to participate and will indicate the service requirements and the factors used for evaluating the proposals. Such factors shall include construction manager's qualifications and experience on similar projects, qualifications of personnel to be assigned to the project, fees, or any additional factor or factors deemed relevant by the procuring entity for procurement of the service; cost is not to be the sole criterion for evaluation. The contract for such services will be awarded to the best evaluated and responsive proposer. A construction manager is prohibited from undertaking actual construction work on a project over which such construction manager coordinates or oversees the planning, design, bid, or construction phases of the project, except in instances where bids have been solicited twice and no bids have been submitted, unless the board and the construction manager have entered into a construction management at risk agreement. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were received, then the construction manager can perform the construction work at a price agreed upon by the construction manager, the architect, and the owner of the project. An institution, at its own discretion, may perform work on the project with its own employees and include the coordination and oversight of this work as part of the services of the construction manager.

(c) The board may enter into a construction management at risk agreement with the construction manager for a guaranteed maximum price of the project. If this agreement is consummated, the construction manager may bid any portion of the project adhering to the bid procedures incumbent upon the other bidders.

(d) A contract manager who provides construction management services must be a contractor licensed in Tennessee.

(e) Construction work, which is under the coordination and oversight of a construction manager, shall be procured through competitive bids as provided in this subdivision (a)(1)(F).

(G) The board shall also have the power to employ procedures to contract with a design-build firm for the construction of new facilities, or additions to existing facilities pursuant to a design build contract, which shall be procured through a request for proposal competitive bids as provided in subdivision (F)(i)(a). All design-build firms shall procure bids for each of proposals independently, which shall satisfy any other competitive bid requirements. Procedures for the use of a competitive bid process must include as a minimum the following:

(i) The preparation of a design criteria package for the design and construction of the public construction project. The board may retain the services of a criteria design professional to prepare this package or, if it deems them qualified, use its employees.

(ii) The qualification and selection of no fewer than three (3) design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the principals or members thereof.

(iii) The evaluation and selection of the design-build firm shall be based on factors which may include qualifications and experience on similar projects, design features, experience of personnel to be assigned to the project, cost, and any additional factors deemed relevant by the board; cost is not to be the sole criterion for evaluation.

(iv) The solicitation of competitive proposals pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.

(v) The evaluation of the responses submitted by the design-build firms, the approval by the board, or its employees, of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design-build criteria professional of employees of the regents.

SECTION 4. Tennessee Code Annotated, Section 49-9-209(b), is amended by adding the following new subdivisions:

(3)

(A) At any stated session, the trustees shall have the power to contract for the construction of school buildings or additions to existing buildings, the expenditure for which is in excess of ten thousand dollars (\$10,000) except when such contract is made after competitive bids. Public notice shall be given at least ten (10) days in advance of accepting bids for such construction, and the board shall award the contract to the lowest and best bidder. In the event no bid is within the budgetary limits set by the trustees for such construction, the trustees may negotiate with the lowest and best bidder to bring the cost of the construction within the funds available.

(B) Construction management services which are provided for a fee and which involve coordination and oversight of the planning, design, bidding and construction phases of the project are deemed to be professional services and may be performed by a qualified person on the basis of recognized competence and integrity. Construction management services are to be procured through a request for proposals process. The request for proposals process will invite prospective proposers to participate and will indicate the service requirements and the factors used for evaluating the proposals. Such factors shall include the construction manager's qualifications and experience on similar projects, the qualifications of personnel to be assigned to the project, fees, or any additional factor or factors deemed relevant by the procuring entity for procurement of the service; cost is not to be the sole criterion for evaluation. The contract for such

services will be awarded to the best evaluated and responsive proposer. A construction manager is prohibited from undertaking actual construction work on a project over which such construction manager coordinates or oversees the planning, design, bidding, or construction phases of the project, except in instances where bids have been solicited twice and no bids have been submitted or unless the trustees and construction manager have entered into a construction management at risk agreement. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were received, then the construction manager can perform the construction work at a price agreed upon by the construction manager, the architect, and the owner of the project. An institution, at its own discretion, may perform work on the project with its own employees and include the coordination and oversight of this work as part of the services of the construction manager.

(C) The trustees may enter into a construction management at risk agreement with the construction manager for a guaranteed maximum price of the project. If this agreement is consummated, the construction manager may bid any portion of the project adhering to the procedures incumbent upon the other bidders.

(D) A contract manager who provides construction management services must be a contractor licensed in Tennessee.

(E) Construction work, which is under the coordination and oversight of a construction manager, shall be procured through competitive bids as provided in this subdivision (b)(3).

(4) The trustees shall also have the power to employ procedures to contract with a design-build firm for the construction of new facilities, or additions to existing facilities pursuant to a design-build contract, which shall be procured through competitive bids as provided in subdivision (b)(3)(A). All design-build firms shall procure bids for each of the proposals independently, which shall satisfy any other competitive bid requirements.

Procedures for the use of competitive bid process must include at a minimum the following:

(A) The preparation of a design criteria package for the design and construction of the public construction project. The trustees may retain the services of a criteria design professional to prepare this package, or if they deem qualified, use its employees.

(B) The qualification and selection of no fewer than three (3) design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms including the principals or members thereof.

(C) The evaluation and selection of the design-build firm shall be based on factors which may include qualifications and experience on similar projects, design features, experience of personnel to be assigned to the project, cost, and any additional factors deemed relevant by the trustees; cost is not to be the sole criterion for evaluation.

(D) The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.

(E) The evaluation of the responses submitted by the design-build firms, the approval by the trustees, or their employees, of the detailed working drawings of the project; and for the evaluation of the compliance of the project construction with the design criteria package by the design criteria professional or employees of the trustees.

SECTION 5. This act shall take effect July 1, 2004, the public welfare requiring it.